



## TIPS FOR EMPLOYERS TO REDUCE WORKERS COMPENSATION LIABILITY

DIVISION OF WORKERS COMPENSATION

KANSAS DEPARTMENT OF HUMAN RESOURCES

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### **Communication with employees during all phases of the employment relationship is the key to reducing liability.**

#### **Communicate by informing employees of their workers compensation rights and the ten (10) day reporting requirements.**

The Kansas Workers Compensation Act requires employers to educate and inform employees of their rights to workers compensation benefits as well as the reporting requirements under the Act. K.A.R. 51-13-1 and K.S.A. 44-5,101. K-WC 40 (the Workers Compensation Notice) must be posted in a conspicuous place where all workers can see their rights and responsibilities under the Workers Compensation Act. These Notices are free and can be obtained from the Division of Workers Compensation by calling (785) 296-3441.

One of the best ways to inform workers of workers compensation benefits and reporting requirements is during the orientation process. The company might consider including the Notice (K-WC 40) and the Information for Injured Employees (K-WC 27) in every orientation packet and having each worker sign a statement that they received, read, and understood the Notice.

K.S.A. 44-520 provides that a worker must give notice of an injury within ten (10) days after the date of accident, unless the employer has actual notice and knowledge of the accident. The ten (10) day notice requirement can be extended for up to seventy-five (75) days if the claimant can establish just cause for failing to notify within ten (10) days. An employer increases the chance of prevailing on the ten (10) day notice issue if the employer can demonstrate they took steps to inform all workers of their rights to workers compensation benefits and the ten (10) day reporting requirements under the 1993 Act.

In *Longhofer v. Advanced Engine Rebuilders, Inc.*, Docket No. 193,037 (October 19, 1994), the Appeals Board for the Division of Workers Compensation held that an employee had good cause for failure to give the ten (10) day notice when he was unaware of the reporting requirements, had never before filed for workers compensation benefits, and the employer admitted that the company had no written policy concerning injuries at work and admitted that a Form 40 was not posted at the work place, nor was any other notice posted advising the employee what to do in case of injury.

Contrary to popular belief, insurance statistics demonstrate that employer's who openly communicate about workers compensation benefits and rights, actually have a lower claims experience than those who do not.

**Communicate your concern for the welfare of your employees when they are hurt on the job by providing immediate medical attention.**

When someone is legitimately hurt on the job, it is very important to provide immediate quality medical care. In fact, it is often wise to give the employee a choice of three physicians at the onset. Then the employee has input from the very beginning as to their course of medical treatment. Choosing a medical provider is very important. Although cost is a factor, quality should be of utmost importance. It is very important to choose doctors who will spend adequate time, show concern for the employee's well being, and conduct a thorough examination. There is nothing that will cause an employee to hire an attorney faster than uncaring, cursory medical treatment. Injured workers like to be reassured that they are receiving good quality medical care. If they have confidence in the medical provider, they will most likely have a positive feeling about their recovery and their prospects for returning to work.

**Communicate your concern by sending get well cards.**

The cost of a first class stamp will go a long way to help reduce liability. Invest in a case

of get well cards. Not only should management send a get well card, but the co-workers and supervisors should also send a get well card. This concept goes back to the basic tenet of common courtesy. If we treat others as we would want to be treated in the same situation, the lines of communication stay open, and the employer/employee relationship stays successfully in tact.

**Send a letter telling the employee you are holding their job for them.**

One of the biggest factors in litigation is uncertainty. Communication alleviates the uncertainty. By sending a letter to your injured worker, telling them you are holding their job for them, you increase the chances that they will not feel the need to contact a lawyer. Communication between the employer and the employee after the injury reduces the chance of litigation.

**Utilize temporary service workers to provide temporary help, so the job can be held for the employee.**

Many employers do not have enough workers and they cannot afford to be without help. Rather than permanently filling the injured worker's position, the services of a temporary agency could be utilized. Temporary service workers provide a stop gap measure so that the injured worker's job can be held for him or her once released from medical treatment. In addition, once the temporary service worker is laid off, the temporary agency is liable for any unemployment benefits. Likewise, if the

temporary worker is injured while working on your premises, the temporary agency is liable for the workers compensation benefits. A temporary service worker is a win/win situation for all sides. By preserving the employer/employee relationship and holding the injured worker's job, the employer will greatly reduce the potential liability. The 1993 Legislature amended K.S.A. 44-510e(a). The statute prohibits an employee from receiving a work disability in excess of their functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of injury. The work disability portion of the statute is triggered only if the employer fails to return the claimant to work or make a reasonable accommodation offer for the medical restrictions.

**While the injured worker is off work, pay the difference between their temporary total disability and their salary, if possible.**

Temporary total disability reimburses the worker 66 2/3% of their weekly salary, up to the statutory maximum per week. Most of us would have to admit that if we had a one-third immediate reduction in our salary, it would cause a budget crunch in the family. Employers can go a long way to building goodwill with their injured workers by supplementing their temporary total disability with the one-third remaining salary. This should only be done if it is financially feasible. The failure to do so will not be catastrophic to the employer/employee relationship.

**Keep in close personal contact with the employee on a weekly basis.**

A representative of the employer should be designated to have weekly contact with injured workers. This contact could be in person or by telephone. The more contact the employer has with the employee, the less likely litigation will result on the claim.

**Offer the employee a light duty job and communicate this offer in writing.**

Many times workers, while undergoing medical care and treatment, have certain restrictions. If you have light duty work available, immediately offer such work to the worker. It makes more economic sense to a worker to be earning a full weekly wage rather than two-thirds of a weekly wage.

**Return an injured worker to work as soon as possible and make accommodations.**

One of the biggest factors in litigation is the fact that when workers return to work, they feel their restrictions are not accommodated. These problems can be avoided by sitting down with the employee, one on one, and coming up with a return to work plan. This way the injured worker has input into the return to work plan, the job, and the job duties. Employers who knowingly and intentionally violate doctor's restrictions are virtually guaranteeing themselves that a work related injury will turn into full blown litigation.

**Prepare the injured worker's co-workers for his/her return to work.**

When an injured worker returns to work, but cannot perform all his/her prior work tasks, a tense situation can arise between the injured worker and co-workers. The employer has the obligation to diffuse this kind of tension and prevent it from occurring. The best prevention is educating co-workers on the employer's return to work policy and the requirements of the Americans With Disabilities Act. It is very important for the employer to notify co-workers that teasing and harassment of an injured worker will not be tolerated and will result in disciplinary action, up to, and including termination.

**Communicate with your insurance carrier or self-insured to get them on the ball to make timely payments.**

As an employer, you pay a premium. Part of the premium goes for claims service. Although insurance adjusters are very busy people, most of them do a good job. Occasionally, neglect on the part of the carrier will cause extreme frustration and cause the claim to become litigated. There is nothing more frustrating to an injured worker than having to deal with a claims adjuster's voice mail and never being able to talk to a human being. Since you, as the employer, have paid the premium, you have the right to demand good service on the claim. Make certain that you convey your desire to have the medical bills and temporary total payments paid in a prompt and timely manner. Bills that are not paid result in col-

lection suits against injured workers, which in turn result in the worker hiring a lawyer. Untimely temporary total checks glean the same results.

**Do not ignore workers compensation problems.**

For years, there has been a management philosophy that if problems are ignored, they will go away. This "ignore it" philosophy is a prominent characteristic of many companies. Ignoring problems will not make them go away. It will only insure the claim blows up, gets totally out of control, and will be litigated into perpetuity.

**Communication and common courtesy will build up goodwill.**

Communication and common courtesy will build up more goodwill than ignoring the situation. If every employer would treat every injured worker as though he/she were a relative, litigation, litigation costs, attorney fees, and payouts for workers compensation claims would dramatically go down. Workers compensation claims involve human relationships. An employer enhances that relationship and reduces the potential liability by openly communicating with workers and practicing common courtesy.